



Comptroller General
of the United States

Washington, D.C. 20548

Silchosly

Decision

Matter of: Eastern Technologies, Inc.
File: B-236392
Date: November 17, 1989

DIGEST

Contracting agency was not required to consider a quotation which the buyer received after award as a result of the offeror's marking an incorrect solicitation number on the envelope containing the quotation.

DECISION

Eastern Technologies, Inc., protests the rejection of its hand-carried quotation as late under request for quotations (RFQ) No. N00612-89-Q-0416, issued by the Naval Supply Center, Charleston, South Carolina, to reprocore habitability improvements on board the USS Fulton after default by the original contractor.

We deny the protest.

Quotations under the RFQ, which was issued without a late quotations clause, were due July 14, 1989. On July 27, the Navy notified Banks-Dorgan, Inc., that it had been awarded the contract for \$252,000, effective July 27. On July 31, the Navy discovered a quote from Eastern when it opened envelopes placed in a folder for solicitation No. N00612-89-R-0409, which had a July 31 closing date. The bid box custodian had placed Eastern's quote in that folder upon receipt on July 14 because the envelope containing Eastern's quote was marked solicitation N00612-89-Q-0409, the correct number except for the letter "Q." The Navy advised Eastern on August 1 that its quote of \$249,964 under RFQ N00612-89-Q-0416 had not been received by the buyer in time for consideration for award as a result of its incorrectly marked envelope. Eastern then protested the Navy's failure to consider its quote to our Office.

Eastern contends that since the Navy's actions are directly responsible for the untimely opening of its quote, the quote should have been accepted. Eastern argues that the

047131/140053

incorrect solicitation number on its envelope was an obvious error which should have caused its bid to be handled as an unmarked or unidentifiable bid, which is required to be opened when received. According to Eastern, it was improper for the Navy to assume that one part of the solicitation number on its envelope was more correct than another and, therefore, the Navy should have opened its envelope on July 14 and routed it to the buyer under the correct RFQ.

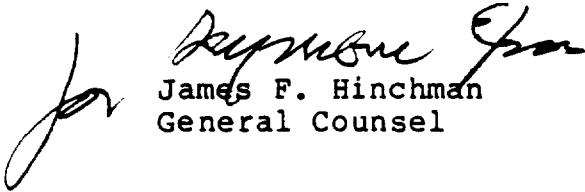
The Navy reports that the bid box custodian did not open the envelope because she had been instructed that material taken from the bid box was only to be opened when it could not otherwise be identified. Since the custodian had often seen contractors place a "Q" where an "R" should be placed on the outside of bid envelopes, and since no solicitation issued by the contracting activity has the same last four numbers as any other solicitation issued in the same fiscal year, the bid box custodian assumed that Eastern's envelope marked "Q-0409" was intended for the "R-0409" solicitation which had a July 31 closing date. The Navy argues that the paramount cause of the delay in locating Eastern's quote was Eastern's mismarking of the envelope into which it had been placed, not the government's handling of the envelope.

The RFQ at issue requested quotations by a certain day but did not contain a late quotations provision expressly providing that quotations must be received by that date to be considered. Therefore, the contracting agency had merely indicated to offerors when the award was anticipated to be made, and should have considered any quotations received prior to award if no substantial activity has transpired in evaluating quotations. Adrian Supply Co., B-235352, Aug. 2, 1989, 68 Comp. Gen. (1989), 89-2 CPD ¶ 99; Instruments & Controls Serv. Co., 65 Comp. Gen. 685 (1986), 86-2 CPD ¶ 16; CMI Corp., B-211426, Oct. 12, 1983, 83-2 CPD ¶ 453.

Here, however, the Navy was not required to consider Eastern's quotation because quotations had been evaluated and award had already been made to Banks-Dorgan, effective July 27, by the time the buyer received Eastern's quote on August 1. While Eastern argues that the Navy's actions were the paramount cause for the untimely opening of its quote, we find that Eastern's marking an incorrect solicitation number on the envelope containing its quote was the immediate cause for the untimely opening of its quote. We do not find unreasonable the bid custodian's assumption that a bid envelope citing solicitation N00612-89-Q-0409 should be filed with responses to solicitation No. N00612-89-R-0409, in view of the contracting agency's numbering procedure cited above. In these circumstances, Eastern must bear the responsibility for receipt of its quotation by the

buyer after contract award, since by mismarking the solicitation number on its envelope Eastern significantly contributed to the late receipt. See Instrumental Steel Erectors, B-233238, Feb. 13, 1989, 89-1 CPD ¶ 146. Accordingly, the Navy properly did not consider Eastern's quotation.

The protest is denied.



James F. Hinchman
General Counsel